No. 89-270

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JOHN RICHARDSON,

Petitioner,

v.

THE CITY OF CHICAGO,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

May a person who has settled all claims he has or may have in the future, arising either directly or indirectly out of the incident which was the basis of litigation, thereafter petition for a writ of certiorari on behalf of a class certified in the same litigation?

May a class seek a declaratory judgment that a municipal policy is unconstitutional where the only named class representative was no longer subject to the policy when he initiated the suit and could not show any likelihood that he would be subject to it again in the future?

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STATEMENT OF THE CASE

The procedural posture of this case is unique. The petitioner seeks review of issues on behalf of a class from which he resigned to settle his own claims. Below he likewise tried to assert someone else's claims by seeking declaratory relief on behalf of the class when he himself had no standing to obtain that type of relief.

As detailed in the opinion below, the petitioner was originally arrested on suspicion of arson, after detectives questioned a number of people who identified him as having threatened to set fire to the premises in question. Petitioner was held without being presented to a judicial

officer for a probable cause determination until his indictment by a grand jury, three days after his arrest. During that time the police interviewed him, checked out his alibi by interviewing witnesses whose names he supplied, interviewed other witnesses, and conducted a lineup at which he was identified as having purchased a can of gasoline the night before the fire. *Robinson v. City of Chicago*, 868 F.2d 959, 960-61 (7th Cir. 1989). During that time he also attempted to escape from jail by crawling into the space above the jail's ceiling. He was injured when the ceiling broke. He was given medical care for his injuries after he was recaptured. (R. Item 75, Dep. Mannion; Dep. Whalen, 24-26; Ex. F)

Because the detectives investigating the fire had not finished checking out the conflicts between the stories of petitioner, his alibi witnesses, and other witnesses at the time of the first court call after arrest, they decided to ask to hold petitioner past the first court call. The watch commander approved this request. Before his indictment, petitioner was also interviewed, as were the other witnesses, by an Assistant State's Attorney. 868 F.2d at 961.

After his pre-indictment detention ended, petitioner brought this action. In it, he sought damages for being held "without the filing of charges," and also a declaratory judgment on his own behalf and that of a class that the City's policy regarding holding suspects beyond the first court call following arrest[1] was unconstitutional.

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[1] The policy being challenged is set out in General Order 78-1 of the Chicago Police Department. In pertinent part, Section 6, paragraph C-2 of that Order provides that police may detain arrestees when "there is a necessity for the detention . . . for a period of time longer than that which might be routinely expected, in order that they may continue the investigation." That policy was known as the City's "hold past court call" policy. 868 F.2d at 961.

Petitioner agreed to dismiss his claims against the individual defendants "in toto" and settle all of his remaining claims against the City of Chicago for $5,000.00. In the stipulation of settlement, petitioner stated that he understood that he was signing "a final and total settlement of all claims [he] may have or may have in the future, arising either directly or indirectly out of the incident which was the basis of this litigation, and that such finalty [sic] is applicable to the remaining defendant, the City of Chicago, its officers, agents and employees." *See* Stipulation, pars. 16, 20, set forth in Appendix A.

The district court, after approving the stipulation and settlement, entered a declaratory judgment on behalf of the class previously certified as including

> all persons who from August 17, 1978 to the time of entry of judgment were held in custody without the filing of charges pursuant to Section 6, Paragraph C-2 of General Order 78-1 of the Chicago Police Department.

Judgment Order, par. 3, set forth in Appendix B. It was this judgment that was reversed by the Seventh Circuit on the ground that petitioner had never had standing to seek a declaratory judgment, 868 F.2d at 968, and the class, lacking a representative with a live controversy, could not proceed on its own. *Id.*

SUMMARY OF ARGUMENT

The petitioner has no standing to seek a writ of certiorari from this Court, having settled "all claims [he] may have or may have in the future, arising either directly or indirectly out of the incident which was the basis of

this litigation." *See* Stipulation, par. 20, set forth in Appendix A. Accordingly, he cannot now come before this Court asking for relief against the City as the representative of a class from which he resigned when he settled his own claims. His petition should therefore be dismissed for want of jurisdiction.

Even assuming that the class he seeks to represent could itself pursue this petition (although the class only does so through his representation), the petition should be denied. This case presents no new or contested issues requiring resolution by this Court. Rather, this case is governed squarely by the principles enunciated by this Court in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), and *Golden v. Zwickler*, 394 U.S. 103 (1969). Since petitioner can show no likelihood that the municipal policy he complains about, which he was no longer subject to when he began this lawsuit, will be applied to him in the future, he has never had standing to pursue declaratory relief on his own behalf. With no proper plaintiff to pursue equitable relief, the Seventh Circuit correctly dismissed the case, since a class cannot seek equitable relief where the class representative never had standing to seek that relief.

No court of appeals has ever held that a class may pursue equitable relief where the class representative never had standing to seek such relief. Therefore, contrary to petitioner's assertions, this case does not present the Court with an opportunity to resolve a dispute among the circuits. If any disagreement exists among the circuits as to the reach of *City of Los Angeles v. Lyons*, which, as discussed below, is doubtful, that disagreement centers on the viability of a declaratory judgment action coupled with a live damages claim where the plaintiff has no standing otherwise for equitable relief. In this case, however, the

petitioner settled all of his claims, leaving the class claim for equitable relief standing alone. This case, therefore, gives this Court no opportunity to resolve that perceived dispute. Accordingly, the petition should be denied.

ARGUMENT

I.

PETITIONER HAS NO STANDING TO ASSERT ANY CLAIM IN THIS COURT.

In his petition, Richardson asks this Court to review the decision below regarding relief to a class even though he personally resigned from the class in order to settle all of his own claims, and thus has no interest whatsoever in the outcome of this litigation. It is axiomatic that one who settles all his claims cannot thereafter seek additional relief from the same defendant. *See Kirby v. Dole*, 736 F.2d 661, 664 (11th Cir. 1934). This petition should be summarily dismissed.

II.

ASSUMING PETITIONER STILL HAS STANDING TO FILE A PETITION WITH THIS COURT, HE HAS NEVER HAD STANDING TO PURSUE EQUITABLE RELIEF.

The Seventh Circuit properly held that petitioner never had standing to seek equitable relief, and that no class action could be maintained through his representation. That holding was correct irrespective of whether or when he settled his own claims. As the Seventh Circuit correctly noted, petitioner's claim is defective for precisely

the same reasons that the plaintiff's claims failed in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). While he had allegedly been damaged by a municipal post-arrest practice or policy at some time in the past, he was no longer being damaged by it at the time he initiated litigation.

In *Lyons*, the plaintiff had sought an injunction against the use of chokeholds by city police officers. The plaintiff alleged that chokeholds were authorized by the city, that he himself had been subjected to a chokehold when he was stopped for a traffic violation and that he had been injured by the chokehold. The United States Supreme Court held that Lyons lacked the Article III standing necessary to invoke the equitable jurisdiction of the federal courts. The Court noted that while Lyons may have suffered injury in fact when he was choked, and that such alleged injury gave him standing to seek damages, Lyons lacked standing to seek prospective relief because a present injunction would do nothing to alleviate his past injury; Lyons could do no more than speculate about pending harm. 461 U.S. at 105. Likewise, to maintain an action for declaratory relief, one must be able to show that there is "sufficient immediacy and reality" that one will in the future be subject to a challenged policy. *Golden v. Zwickler*, 394 U.S. 103, 109 (1969). Petitioner can make no such showing.

In order to be subject to the complained-of City policy in the future, petitioner not only would have to be arrested again on a serious charge, but also would have to be the subject of an investigation—such as the alibi checking that delayed matters here—that could not be completed before the first court call after arrest. Such an extremely speculative foundation cannot support an equitable claim. As this Court has stated:

> [W]e are nonetheless unable to conclude that the case-or-controversy requirement is satisfied by general assertions or inferences that in the course of their activities respondents will be prosecuted for violating valid criminal laws. We assume that respondents will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners.

O'Shea v. Littleton, 414 U.S. 488, 497 (1974).

The federal courts overwhelmingly have followed *Lyons* and *O'Shea* and dismissed claims for equitable relief brought by plaintiffs who cannot personally benefit from that type of relief. *See, e.g., Gladden v. Roach*, 864 F.2d 1196 (5th Cir. 1989); *Holmes v. Fisher*, 854 F.2d 229 (7th Cir. 1988); *Tucker v. Phyfer*, 819 F.2d 1030 (11th Cir. 1987); *Smith v. City of Fontano*, 818 F.2d 1411 (9th Cir. 1987).

The Seventh Circuit's recognition that petitioner lacked standing to pursue equitable relief is based on well-established legal principles and presents no reason for this Court to reexamine those principles. Indeed, petitioner does not even ask this Court to reexamine the question of his own standing although success in this Court depends upon it.

III.

PETITIONER'S FORMULATION OF HIS CLAIM AS A CLASS ACTION DOES NOT GIVE STANDING EITHER TO HIM OR TO THE CLASS.

The petitioner argues that the "capable of repetition, yet evading review" doctrine permits the class to pursue equitable relief. However that doctrine does not help him. Where the named plaintiff has no standing to pursue equitable remedies, the class claim must also be dis-

missed. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 n.20 (1976).

This Court has applied the "capable of repetition" doctrine to save a class claim from mootness when the named plaintiff's claim became moot after class certification, *Sosna v. Iowa*, 419 U.S. 393 (1975), and where the named plaintiff's claim expired before a class could be certified, *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). This Court has never, however, extended the doctrine to a situation where the named plaintiff lacked standing at the time the litigation was initiated. Indeed, this Court stated in *Sosna* that "[o]ur conclusion that this is not moot in no way detracts from the firmly established requirement that the judicial power of Article III courts extends only to 'cases and controversies' specified in that Article. There must . . . be a named plaintiff who has such a case or controversy at the time the complaint is filed . . ." 419 U.S. at 402.

As the Seventh Circuit has explained, *Sosna* created an exception to the general rule that the plaintiff must have standing—a live case or controversy—not only at the date the action is initiated, but at every stage of the trial and appellate proceedings. "In essence," the court explained, "the Supreme Court has entertained the fiction that, upon certification, the class obtains a legally recognizable interest, independent of that of the named plaintiff, that relates back to the date of the original motion for certification." *Foster v. Center Township*, 798 F.2d 237, 245 (7th Cir. 1986). In some cases, where the claim is of a highly transitory nature, the certification may even be deemed to relate all the way back to the filing of the original complaint. *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). However, the "capable of repetition yet evading review"

exception has never been applied in a case like this, where the putative class representative never had standing. *See Foster v. Center Township*, 798 F.2d 237 (7th Cir. 1986) (class claims dismissed where class representative never had standing); *Palmer v. City of Chicago*, 755 F.2d 560, 570 (7th Cir. 1985) (same). Here, of course, petitioner did not even satisfy the second prong of the doctrine, since the municipal policy would not have evaded review in his damages claim if he had chosen not to settle it. *See Robinson*, 868 F.2d at 968.

Despite petitioner's assertions, neither *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976), nor *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980), helps him. In *Franks* the plaintiff had a live claim challenging discrimination in hiring and job assignments both at the time he initiated litigation, and when the class he sought to represent was certified. Thereafter, his own claim became moot, but this Court permitted the class claim to proceed. Likewise in *Geraghty*, the named plaintiff had a live claim challenging parole release guidelines when he initiated litigation and when he sought class certification. His application to proceed on behalf of a class was denied and his own claim thereafter became moot. This Court held that he nonetheless had standing to appeal the denial of class certification. 445 U.S. at 404. Thus in both *Franks* and *Geraghty* the putative class representative had standing both at the initiation of litigation and when seeking class certification. The petitioner here had standing at neither key time.

As the Seventh Circuit aptly summarized it, "*Geraghty* does not breathe life into a stillborn case." *Holmes v. Fisher*, 854 F.2d at 232.

IV.

THIS CASE PRESENTS NO CONFLICT WITH NINTH CIRCUIT OPINIONS.

Contrary to the petitioner's assertions, this case presents no conflict with decisions of the Ninth Circuit. That court has likewise never permitted a class claim to go forward where the putative representative lacked standing to seek declaratory relief. In *LaDuke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985), modified on other grounds, 796 F.2d 309 (9th Cir. 1986), the court permitted a class of migrant workers to pursue a claim for equitable relief from the Immigration and Naturalization Service's policy of conducting warrantless surprise sweeps of migrant housing. The district court there had found that there was a pattern of conducting such sweeps; that the sweeps were likely to recur; that the plaintiffs had been subjected to them more than once; and that, regardless of the legality of their own behavior, the plaintiffs were likely to be subjected to such sweeps again, simply by the innocent activity of residing in such housing. None of the facts that made equitable relief appropriate for the plaintiffs in *LaDuke* is present here. As noted above, the likelihood that petitioner would ever again be subject to the City's hold past court call policy is remote and speculative in the extreme.

The only time the Ninth Circuit permitted a claimant—and then only an individual and not a class—to seek equitable relief against a post-arrest police procedure was where the plaintiff had a live damages claim based on the same legal theory and set of facts as her equitable claim. In *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984), which was decided one year after *Lyons*, the Ninth Circuit reversed the decision of a district court dismissing a woman's

claim that her constitutional rights were violated by being subjected to a warrantless strip search after arrest on a minor traffic charge. The Ninth Circuit discussed at length how she had stated a claim for damages for such a search where there was no individualized suspicion that she had been concealing weapons or contraband. 746 F.2d at 615-619. The Court gave much briefer consideration to her claims for equitable relief. The plaintiff herself had asked that her claim for injunctive relief be dismissed. 746 F.2d at 619. Noting that she had a live case or controversy with respect to her damages claim, in contrast to the plaintiff in *Lyons* whose damage claim the court characterized as having been "severed from his claim for injunctive relief," 746 F.2d at 619, the court remanded to the district court the question of whether "relief in addition to damages is appropriate." *Id.*

Since *Giles*, the Ninth Circuit has never permitted a claim to go forward for equitable relief in a *Lyons* situation. In *Smith v. City of Fontano*, 818 F.2d 1411 (9th Cir. 1987), the court invoked *Lyons*, and refused to permit the children of a victim of excessive force to pursue equitable relief. The children had alleged a pattern of police brutality against black citizens, but pled facts only about the single incident of their father's death. While they clearly had standing to seek damages on a substantive due process theory for his death, that was insufficient to show a live case or controversy for equitable relief on an equal protection theory. The court specifically limited its prior holding in *Giles* to situations where the claims for declaratory and damages relief "involve the same operative facts and legal theory." 818 F.2d at 1423.

Whether the Ninth Circuit, in light of subsequent cases, would permit the *Giles* plaintiff today to seek equitable

relief is perhaps an open question, but it is certainly not a question raised by this case. Here the petitioner has no live claim of any type, having settled all his claims. The class, whose claim he presses here, never sought damages, but only declaratory relief, 868 F.2d at 961-62, and so even its claim—assuming it could have a claim by itself—is not assisted by the limited exception suggested in *Giles*.

In short, petitioner's efforts to pursue claims for equitable relief, which he never had standing to pursue on his own behalf, on behalf of the class he abandoned, were properly dismissed by the Seventh Circuit. As that court noted, " 'this case was dead on arrival, moot the day the complaint was filed. So far as equitable relief was concerned, there was *never* a case or controversy within the meaning of Art. III of the Constitution.' " 868 F.2d at 968, quoting *Holmes v. Fisher*, 854 F.2d at 232 (emphasis in original).

Petitioner's efforts to save a dead case by formulating it as a class action are unavailing. As this court has noted, the fact that a suit may be a class action

> adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.

Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 n.20 (1976), citation omitted. The class here has no more standing to pursue equitable relief than did the petitioner. Accordingly the petition should be denied.

CONCLUSION

Because this petition is filed by one with no stake in its outcome, and because it presents no novel or disputed question of law, it should be dismissed or denied.

Respectfully submitted,

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APPENDICES

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APPENDIX A

[FILED DECEMBER 19, 1986]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALBERT ROBINSON, WILLIE MOORE,
and JOHN RICHARDSON,

Plaintiffs,

vs.

CITY OF CHICAGO, PHILLIP E. MANNION,
#8303 and T. WHALEN, #15670,

Defendants.

No. 83 C 5685—Judge Leighton—Jury Demand

STIPULATION

NOW COME the plaintiffs, ALBERT ROBINSON, WILLIE MOORE and JOHN RICHARDSON, by and through their attorneys, KENNETH N. FLAXMAN and JOEL R. MONARCH, and defendants, CITY OF CHICAGO, PHILLIP E. MANNION and THOMAS WHALEN, by and through their attorney, JUDSON H. MINER, Acting Corporation Counsel of the City of Chicago, and herein Stipulate and Agree to the following:

1. On or about July 18, 1981, the defendants, Phillip E. Mannion and Thomas Whalen, were employed as police officers for the City of Chicago. On said date the defendants did engage in certain police matters.

2. That on said date and time, the defendant, City of Chicago, was a Municipal corporation, incorporated under the laws of the State of Illinois.

3. That on July 18, 1981, four (4) persons were killed as a result of a fire at the building located at 635 West Barry Avenue, Chicago, Illinois. The fire was deemed to be arson in origin, and the defendants, Mannion and Whalen, acting in their capacity as police officers of the City of Chicago, investigated the above-mentioned fire.

4. That on July 18, 1981, while on duty and investigating said fire, and while so employed, came into contact with the plaintiffs, Willie Moore and Albert Robinson. On July 19, 1981, the plaintiffs were asked to come to the District Police Station for further investigation of their corroborating statements made previously pertaining to plaintiff John Richardson's statements.

5. Plaintiffs, Willie Moore and Albert Robinson, remained at the District Police Station until 5:00 a.m. of July 21, 1981.

6. That on July 18, 1981, Chicago police officers took plaintiff, John Richardson, into custody at about 2:00 p.m. The plaintiff, John Richardson, was held in custody until July 21, 1981, and was indicted by the Cook County Grand Jury under Grand Jury #311 July. Plaintiff was charged with Murder and Aggravated Arson, and scheduled for Branch 66 on July 22, 1981.

7. Subsequently, the plaintiff, John Richardson, was discharged, after a trial before a judge, of all charges.

8. The plaintiffs, Willie Moore and Albert Robinson, contend that they were held in custody and were deprived of rights secured by the Fourth Amendment of the Constitution of the United States.

9. The plaintiff, John Richardson, contends that he was held in custody without the filing of charges pursuant to Sec. 6, paragraph C-2 of General Order 78-1 of the Chicago Police Department.

10. The plaintiff, John Richardson, also contends that the defendant, City of Chicago maintains a policy under

the above-mentioned General Order which authorizes Chicago police officers to extend the time of detention of a person for Investigation Purposes which delays the formal filing of charges and deprives a person of his rights under the Fourth Amendment of the United States Constitution.

11. The defendants denied the above-stated allegations of the plaintiffs, and further stated that at all times they acted in good faith and the detention of the plaintiffs was reasonable under the circumstances.

12. The defendants further denied that the General Order 78-1 constituted a policy to deprive or violate a person of his rights.

13. Each of the said parties states that if called upon to testify before this Honorable Court, his or her testimony would be substantially the same as that contained in their pleadings, Motion to Dismiss, Memorandums in Support, depositions and their statements made in the Police Department and Office of Professional Standards' investigation which was made as a result of this incident (C-265971).

14. Each of the parties herein waives a trial by jury and agrees to a trial instanter before this Honorable Court.

15. The settlement of this claim is not an admission of liabilities on the part of any of these defendants, nor is it an admission that General Order 78-1, Sec. 6, paragraph C-2, constitutes a policy of the defendant, City of Chicago, to violate the Fourth Amendment rights of any individual. Further, the defendants and plaintiffs stipulate and agree that this settlement does not constitute an admission that any such policy or class of persons exists.

16. In consideration of the hereinafter indicated settlement and the judgment entered pursuant to the Stipulated, and upon advice of counsel, plaintiffs, Albert Robinson, Willie Moore and John Richardson, agree to dismiss their respective claims, in toto, with prejudice as to the defendants, Phillip E. Mannion and Thomas Whalen.

Further, the plaintiffs agree that such dismissal shall be with prejudice and without costs and without attorney's fees.

17. In consideration of the hereinafter indicated settlement and judgment entered thereon, plaintiffs agree to indemnify and hold harmless the City of Chicago, its officers, agents and employees, including but not limited to, the remaining defendant, from any claims, losses, damages or expenses incurred, or which may be incurred, by reason of the incident which was the basis of this litigation.

18. Plaintiffs, Albert Robinson, Willie Moore and John Richardson, upon advice of counsel are aware of the manner and method of payment of this judgment to be entered herein by and through the City of Chicago and pursuant to Court Orders resulting from the following cases: *Sylvia Evans, et al.*, plaintiffs, v. *City of Chicago, et al.*, defendants, No. 77 C 4119, No. 79 C 1939, (Northern District of Illinois), and *Sylvia Evans, et al.*, plaintiffs v. *City of Chicago, et al.*, defendants, No. 81-1150, consolidated with *Bertha Balark, et al.*, plaintiffs, v. *City of Chicago, et al.*, defendants, No. 81-1344 (Seventh Circuit, U.S. Court of Appeals).

Further, such plaintiffs agree to and are satisfied with same, and are further satisfied with the sum of money indicated here in and in such judgment.

19. It is further agreed that the judgment herein is to be paid by the City of Chicago, with Post-Judgment interest at the rate set for municipalities as provided for by law (Illinois Revised Statutes, Chapter 74, §3; and its successor, Illinois Revised Statutes, 1982, Chapter 110, §2-1303).

20. Plaintiffs, Albert Robinson, Willie Moore and John Richardson, understand, and upon advise of their counsel agree, that such judgment is a final and total settlement of all claims they have, or may have in the future, arising either directly or indirectly out of the incident which was the basis of this litigation, and that such finalty is applicable to the remaining defendant, the City of Chicago, its officers, agents and employees.

IT IS THEREFORE STIPULATED AND AGREED AS FOLLOWS:

A. The claims of plaintiffs, ALBERT ROBINSON, WILLIE MOORE and JOHN RICHARDSON, be dismissed, in toto, with prejudice and without attorney's fees and without costs as to the defendants, PHILLIP E. MANNION and THOMAS WHALEN, in accordance with the Stipulation.

B. That the plaintiff, ALBERT ROBINSON, accepts a judgment against the remaining defendant, CITY OF CHICAGO, in the total amount of FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS in accordance with this Stipulation.

C. That the plaintiff, WILLIE MOORE, accepts a judgment against the remaining defendant, CITY OF CHICAGO, in the total amount of FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS in accordance with this Stipulation.

D. That the plaintiff, JOHN RICHARDSON, accepts a judgment against the remaining defendant, CITY OF CHICAGO, in the total amount of FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS in accordance with this Stipulation.

E. That the total of all judgments stated in paragraphs B, C, and D of this Stipulation is FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS. The amount stated above is the total Stipulated amount of all claims of the plaintiffs. The attorney's fees and costs, are reserved until a final determination by settlement or a final non-appealable court order.

Respectfully submitted,

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APPENDIX B

[DATED DECEMBER 19, 1986]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALBERT ROBINSON, WILLIE MOORE, and JOHN RICHARDSON, individually and on behalf of a class,

Plaintiffs,

-vs-

CITY OF CHICAGO, et al.,

Defendants.

83 C 5685—Judge Leighton

JUDGMENT ORDER

This action came on for hearing before the Court, Honorable George N. Leighton, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED AND DECREED AS FOLLOWS:

1. *Claims against Defendants Mannion and Whalen:* In accordance with a stipulation, all of plaintiffs' claims against defendants Phillip E. Mannion and Thomas Whalen are hereby dismissed with prejudice and without costs and without attorneys' fees.
2. *Monetary Claims against the City of Chicago:* Pursuant to the stipulation filed by the parties, judgment

is hereby entered in favor of plaintiffs Robinson, Moore, and Richardson and against defendant City of Chicago in the amount of fifteen thousand dollars, exclusive of costs and attorneys' fees.

3. *Declaratory Judgment on behalf of a Class:* In accordance with the Court's order of June 25, 1986, the Clerk of the Court is directed to enter this decree as a final judgment in favor of the plaintiff class, defined as:

> All persons who from August 17, 1978 to the time of entry of judgment were held in custody without the filing of charges pursuant to Section 6, Paragraph C-2 of General Order 78-1 of the Chicago Police Department.

and against defendant City of Chicago with respect to the claim adjudicated herein.

4. *Declaratory Judgment:* The Court hereby declares that all persons who were held in custody without the filing of charges pursuant to Section 6, Paragraph C-2 of General Order 78-1 of the Chicago Police Department have been deprived by defendant City of Chicago of rights secured by the Fourth Amendment to the Constitution of the United States.

5. *Reservation of Jurisdiction:* Defendant City of Chicago has expressed its intention to appeal from this final decision. Accordingly, the Court expressly reserves jurisdiction to enter such further orders as may be required to effectuate the judgment entered in this case, and defers until final judgment of the City's appeal the question of whether notice of any sort is appropriate, as well as determination of the amount of fees and costs due to plaintiffs' counsel for having prevailed in this cause.

Dated: December 19, 1986

ENTER: /s/ George N. Leighton
George N. Leighton
United States District Judge